

Attorney Docket No. 37167-8043.US00

**PATENT****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**IN RE APPLICATION OF: MORRIS *et al.*

SERIAL No.: 09/938,276

FILED: AUGUST 22, 2001

**FOR: TISSUE SURFACE TREATMENT APPARATUS  
AND METHOD**

EXAMINER: Peffley, M.

ART UNIT: 3739

CONFIRMATION No.: 1933

**Petition under 37 C.F.R. §1.47(a)**

Mail Stop Petitions  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Applicant hereby petitions, under 37 C.F.R. §1.47(a), to make the present application on behalf of himself and the omitted inventors, David L. Morris and Steve A. Daniel, who have refused to join in the application. Provided herein, in accordance with this section, are proof of the pertinent facts, the last known address of the inventors, and the petition fee.

1. A grantable Petition under 37 C.F.R. §1.47(a), to make the present application on behalf of the omitted inventor(s) requires (A) a petition including proof of the pertinent facts establishing that the joint inventor(s) refuses to join, or cannot be found or reached after diligent effort; (B) a proper oath or Declaration executed by the available joint inventor(s); (C) the fee as specified in 37 C.F.R. §1.17(g) and (D) the last known addresses of the omitted inventor(s).

**Declaration of Facts**

2. I, the undersigned, am the agent of record for this case. The following describes my knowledge of the situation.

3. David L. Morris and Steve A. Daniel were listed as co-inventors on the subject application as filed. David L. Morris was a consultant for RITA Medical Systems, Inc. and Steve A. Daniel was an employee of RITA Medical Systems, Inc. Following work on the invention, Steve A. Daniel left employment at RITA Medical Systems, Inc, the Assignee of record. The most recent known addresses of the parties involved are:

David L. Morris  
960 Forest Road  
Pitney Clinical Sciences Blvd.  
The St. George Hospital

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Shorts Street  
Sydney, Kogarayi NSW 2217  
Australia

Steve A. Daniel  
40874 Calido Place  
Fremont, CA 94539

4. The present application was filed on August 22, 2001. A Declaration executed by all the inventors (David L. Morris, Steve A. Daniel, and Daniel J. Balbierz) on December 14, 2004, December 13, 2001, and December 10, 2001, respectively, was mailed to the U.S. Patent and Trademark Office on January 18, 2002.

5. On April 27, 2007, the United States Patent and Trademark Office (USPTO) mailed a Notice of Allowance and Fee Due. The accompanying Notice of Allowance required submission of a substitute Oath or Declaration.

6. On May 30, 2007, our office forwarded a Declaration, a copy of the application, and the allowed claims to Daniel L. Morris by Federal Express at the following address:

960 Forest Road  
Pitney Clinical Sciences Blvd.  
The St. George Hospital  
Shorts Street  
Sydney, Kogarayi NSW 2217  
Australia

7. On May 30, 2007, our office forwarded a Declaration, a copy of the application, and the allowed claims to Steve A. Daniel by Federal Express at the following address:

40874 Calido Place  
Fremont, CA 94539

8. Applicants enclose herewith documentation of the above-referenced events:

a. A copy of letters dated May 30, 2007 from Perkins Coie LLP to David L. Morris, Steve A. Daniel, and Daniel J. Balbierz, respectively, enclosing the Declaration via Federal Express.

b. A copy of the Federal Express shipment tracking showing delivery of the documents mailed on May 30, 2007 to Dr. Morris on June 4, 2007 at 11:51 am to the address listed in point 3, above<sup>1</sup> as well as a copy of the Federal Express label showing the amended address.

c. A copy of the Federal Express shipment tracking showing delivery of the documents mailed on May 30, 2007 to Mr. Daniel on May 31, 2007 at 9:53 AM.

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<sup>1</sup> The letter to Dr. Morris listed the postcode as "1127"; however, when the package was picked-up by Federal Express, a discrepancy between the postcode and the city was noted. The correct postcode of "2217" was given to Federal Express and the package was delivered to the address listed in point 6, not the address listed on the letter referenced in point 8(b).

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Conclusion

Applicant's representative has not received any communication from either of Dr. Morris or Mr. Daniel since May 30, 2007. This petition is necessitated by the upcoming, unextendible deadline to pay the Issue Fee.

Applicant submits that this petition complies with the requirements of 37 C.F.R. §1.47(a) and MPEP §409.03(d), and gives documented evidence that the missing inventors refused to join in the application after a diligent effort was made to obtain their signature on the application papers.

Fee Payment

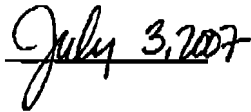
- ☒ Petition Fee (37 C.F.R. §1.17(g)): \$200.00
- ☒ A check including the fee is enclosed.
- ☒ Please charge any additional fees necessary for consideration of this paper to Deposit Account No. 50-2207.

Respectfully submitted,



Jacqueline F. Mahoney  
Registration No. 48,390

Date:

Correspondence Address:

Customer No. 22918

Phone: (650) 838-4300

Attorney Docket No. 37167-8043.US00

Sydney, Kogarayi NSW 2217  
Australia

Steve A. Daniel  
40874 Calido Place  
Fremont, CA 94539

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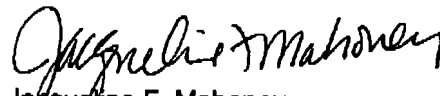
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- ☒ Please charge any additional fees necessary for consideration of this paper to Deposit Account No. 50-2207.

Respectfully submitted,



Jacqueline F. Mahoney  
Registration No. 48,390

Date: June 29, 2007

Correspondence Address:

Customer No. 22918  
Phone: (650) 838-4300